



The State of New Hampshire
Department of Environmental Services
Water Council

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STATE OF NEW HAMPSHIRE
WATER COUNCIL

Docket No. 03-10 WC

Appeal of The Conservation Law Foundation
In Re: Water "Falls Way Subdivision" Water Quality Certificate No. 2003-001

Decision & Order
on
Motion to Compel

Background

On August 18, 2003, the Conservation Law Foundation ("Appellant") filed a petition for appeal, of the Department of Environmental Services, Water Division's ("DES") issuance of Water Quality Certificate No. 2003-001 to Endicott General Partnership ("Applicant"), with the NH Water Council ("the Council").

On July 18, 2005 the Appellant filed a Motion to Compel ("the motion") with the Council. In the motion the Appellant requests that the Council requires DES answer interrogatories propounded by the Appellant; that the Council requires DES make DES employees Paul Currier and Paul Piszczek available for depositions; and that the Council requires DES properly respond to discovery requests.

On July 18, 2005 DES filed a Witness and Exhibit List with the Council. Witnesses listed include Paul Currier and Paul Piszczek.

On July 25, 2005 DES filed an Objection to the Appellant's Motion to Compel ("the objection"). In the objection, DES states in paragraph 4 that pursuant to the Council's June 15, 2005 order, DES has filed its witness and exhibit list and served it on counsel for the other parties. All of the

State's exhibits have been, or shortly will be, made available to the other parties. In paragraph 6 DES states that CLF [the Appellant] will shortly be in possession of all documents, with the exception of attorney-client privileged materials, relating to DES' consideration of the Falls Way 401 application. DES further states that the New Hampshire Supreme Court has held that depositions of agency staff are not required in administrative proceedings, where cross-examination is available.

Order

The Council finds that based upon the availability of all documents, with the exception of attorney-client privileged materials, relating to DES' consideration of the Falls Way 401 application an order granting further discovery requests are unnecessary.

The Council finds that since the two DES employees mentioned by the Appellant in the Motion to Compel are listed on the DES Witness List, the Appellant will in fact have an opportunity to cross examine these two witnesses. Consistent with the New Hampshire Supreme Court ruling cited by DES, depositions of the two DES employees is not required.

Motion to Compel is **DENIED**.

So Ordered for the Council by:

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Michael P. Scuderi, Appeals Clerk

September 7, 2005